

## ARTICLE 1

### DEFINITIONS

#### Section 1.1 DEFINITIONS

For the purpose of this License, the following words, terms phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Access Channel - A video programming channel which Licensee makes available to the Town without cost for the purpose of transmitting non-commercial programming by members of the public, Town departments and agencies, public schools and educational, institutional and other non-profit organizations, subject to and in accordance with 47 U.S.C. 531.

Cable Communications Policy Act of 1984 ("CCPA" or "Cable Act"): Public Law No.

98-549, 98 Stat. 2779 (1984), amending the Communications Act of 1934, and effective on December 29, 1984, as further amended by the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102-385 106 Stat. 1460 (1992) and the Telecommunications Act of 1996, Public Law No. 104-458, 110 Stat. 56 (1996).

Cable Service: The transmission to subscribers of video programming or other programming services, together with subscriber interaction, if any, which is required for the selection of such video programming which Licensee may make available to subscribers generally.

Cable Communications System or Cable System: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Town.

Channel: A band of frequencies in the electromagnetic spectrum, or any other means of transmission (including without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a composite video signal.

CMR: Code Massachusetts Regulations.

Division: Cable Television Division of the Commonwealth of Massachusetts.

Downstream Channel: A channel over which signals travel from the Cable System headend to an authorized recipient of programming.

Educational Access: Any specific channel on the Cable System which has been allocated for use by educational organizations and institutions in the Town of Barnstable, and the use thereof, to present non-commercial educational programming or information as determined by the Issuing Authority, and in accordance with 47 U.S.C. 531 and the terms hereof.

Effective Date: February 1, 1999.

FCC: The Federal Communications Commission, or any successor agency.

Government Access: Any specific channel on the Cable System which has been allocated for use by the Town of Barnstable, the Issuing Authority or their designee(s), and the use thereof, to present non-commercial programming or information as determined by the Issuing Authority, and in accordance with 47 U.S.C. 531 and the terms hereof.

Gross Annual Revenue: Compensation, in whatever form, exchange or otherwise, received by Licensee which is derived from all revenues for the provision of cable service on the Cable System within the Town of Barnstable, defined as installation revenues (including, among other things, reconnection and second set), equipment charges, advertising revenues as prorated to include those attributable to the Barnstable Cable System, leased access revenues, home shopping revenues and any other revenues from the operation of the cable television system in the Town of Barnstable; provided, however, that gross annual revenues shall not include (1) any franchise fees (according to applicable law) or taxes on services furnished by the Licensee; (2) to the extent consistent with generally accepted accounting principles, adjustments to cash receipts and non-operating cash receipts for bad debts, refunds, credit adjustments, reimbursements from Affiliates or vendors, returned checks and asset sales when such sales do not occur in the ordinary course of business; (3) revenues of any Affiliate from the sale of merchandise (not including subscriber equipment) and (4) revenues from telecommunications services to the extent such revenues are excluded by the Cable Act as amended.

Issuing Authority: The Town Manager of the Town of Barnstable, Massachusetts.

Leased Channel: Any channel available for lease for programming by persons other than Licensee subject to and in accordance with 47 U.S.C. 532.

Licensee: MediaOne of Massachusetts, Inc., or any successor or transferee in accordance with the terms and conditions in this License.

Local Origination: Local programming produced by the Licensee and/or its staff.

Pay Cable or Premium Cable Services: Programming delivered for a fee or charge to subscribers on a per-channel basis or as a package of services, not including basic service and other regulated tiers.

Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Public Access: Any specific channel on the Cable System which has been allocated for use by individuals and/or organizations, and the use thereof, to present non-commercial programming in accordance with 47 U.S.C. 531 and the terms hereof.

Public, Educational and Government Access ("PEG Access"): The right or ability of any Barnstable residents or organizations, schools and governmental entities to use designated facilities, equipment and/or channels of the Cable System in accordance with 47 U.S.C. 531 and this License.

Public Ways: The surface of, as well as the spaces above and below, any and all public streets, avenues, alleys, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, bulkheads, piers, dedicated public utility easements or any other easements or rights of way dedicated for compatible uses, and public grounds and/or waters and all other publicly owned real property within or belonging to the Town now or hereafter existing. Reference herein to "Public Way" or

"Street" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose without applicable legally required permits, or that the Licensee shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.

Standard Service Package - A combination of cable service tiers, consisting of the Basic Broadcast tier and Cable Programming Service tiers, as those tiers are defined by the FCC, as provided by the Licensee as of the Effective Date and including any individual broadcast channels or cable networks added to these tiers as a result of the reconstruction of the Cable Communications System.

Town: The Town of Barnstable, Massachusetts.

Upstream Channel: A channel over which signals travel over the Cable System to the headend from remote points of origination.

## **ARTICLE 2 GRANT AND TERM OF LICENSE**

### **Section 2.1 GRANT OF LICENSE**

Pursuant to the authority of Chapter 166A of the General Laws of the Commonwealth of Massachusetts and the Cable Communications Policy Act of 1984 as further amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and subject to the terms and conditions set forth herein, the Town Manager, as the Issuing Authority of the Town, hereby grants a non-exclusive cable television license to Licensee, authorizing and permitting Licensee to construct, upgrade, install, operate and maintain a Cable Communications System within the corporate limits of the Town of Barnstable.

### **Section 2.2 RIGHTS AND PRIVILEGES OF LICENSEE**

Subject to the terms and conditions herein, the Issuing Authority hereby grants to Licensee, the right to construct, upgrade, install, operate and maintain a Cable Communications System in, under, over, along, across or upon the Public Ways of the Town of Barnstable within its municipal boundaries and subsequent additions thereto for the purpose of cable television system reception, transmission, collection, amplification, origination, distribution, and/or redistribution of Cable Services, I-Net services, cable modem services and other services customarily provided by a cable operator subject to and in accordance with all applicable laws. The Town reserves any rights it may have otherwise relative to services not within its franchising power including without limitation, telecommunications services.

### **Section 2.3 APPLICABLE LAW**

This License is granted under, in compliance with and subject to Chapter 166A of the General Laws and all other general laws and acts of the Legislature, and in compliance and subject to all applicable federal law, including, but not limited to, all rules of the Federal Communications Commission ("FCC"), as amended, and in compliance with and subject to all other municipal, state and federal rules and regulations in force and effect during the period for which this License is granted. This License is subject to all rules and regulations of the Massachusetts Cable Television Division. Any reference herein to federal, state and municipal laws, by-laws and ordinances, whether statutory or regulatory, shall be deemed to encompass the present terms thereof as amended from time to time during the license term.

### **Section 2.4 TERM OF RENEWAL LICENSE**

(a) This License shall commence upon execution. The period from execution through December 30, 1999 represents the unexpired term of the predecessor license and, as such, the terms herein constitute an amendment and restatement of said license.

The renewal term of this License shall extend through December 30, 2009.

### **Section 2.5 TRANSFER AND ASSIGNMENT OF RENEWAL LICENSE**

(a) To the extent required by G.L.c. 166A, Section 7, and the regulations of the

Division promulgated thereunder (207 CMR 4.00 et. seq.), this License or control thereof shall not be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any person, company or other entity holding such License to any other person, company or other entity, without the prior written consent of the Issuing Authority, which consent shall not be unreasonably or arbitrarily withheld. Such consent shall be given only after a public hearing upon a written application and forms therefor as provided by the Division and on FCC or other applicable forms. The application for transfer consent shall be signed by Licensee and by the proposed transferee or assignee.

(b) Any reasonable legal costs up to Two Thousand Dollars (\$2,000) incurred by the Issuing Authority in connection with the review of such application shall be reimbursed by the Licensee or transferee.

(c) Any transfer or assignment of license shall, by its terms, be expressly subject to the terms and conditions of this License and obligations, if any, arising from the award of this License. Any transferee or assignee of this License shall be subject to the terms and conditions contained in this License.

(d) The Licensee shall submit to the Issuing Authority an original and five (5) copies, unless otherwise directed, of the license transfer application, including any forms required by state or federal law.

## **Section 2.6 NON-EXCLUSIVITY OF LICENSE**

(a) This License shall not affect the right of the Issuing Authority to grant any other license or right to occupy or use the streets, or portions thereof, for the construction, upgrade, installation, operation or maintenance of a Cable Communications System within the Town of Barnstable; or the right of the Issuing Authority to permit the use of the Public Ways and places of the Town for any purpose whatsoever. The Licensee hereby acknowledges the Issuing Authority's right to make such grants and permit such uses.

(b) Any additional cable licenses or Open Video System permits granted by the Issuing Authority shall be equitable in light of the privileges and obligations which this License sets forth for the Licensee, taking into consideration such differential factors as term, service area and services to be provided.

(c) The issuance of additional license(s) shall be subject to all applicable federal law(s), and state laws, including G.L.c 166A and applicable regulations promulgated thereunder.

## **Section 2.7 POLICE AND REGULATORY POWERS**

By executing this License, Licensee acknowledges that its rights are subject to the powers of the Town to adopt and enforce general ordinances and bylaws necessary to the safety and welfare of the public and of general applicability and not specific to this License or to cable operators only. Licensee shall comply with all applicable laws and ordinances enacted by the Town pursuant to any such powers.

## **Section 2.8 REMOVAL OR ABANDONMENT**

Upon termination of this License by passage of time, license revocation or

otherwise, and unless Licensee renews its License for another term or Licensee transfers the Cable System to a transferee approved by the Issuing Authority, Licensee shall upon request of the Issuing Authority remove its supporting structures, poles, transmission and distribution systems and all other appurtenances from the Public Ways and places and shall restore all areas to their original condition.

If such removal is not completed within six (6) months after such termination, the Issuing Authority may deem any property not removed as having been abandoned. Notwithstanding this Section, to the extent federal law applies pursuant to Section 2.9 (Proceedings Upon Expiration or Revocation), the applicable provisions of federal law (47 U.S.C. 547) shall govern.

## **Section 2.9 PROCEEDINGS UPON EXPIRATION OR REVOCATION**

In the event that this License is revoked, and all appeals have been exhausted, or that it expires, and the Issuing Authority determines not to renew this License and all appeals have been exhausted, or the License otherwise terminates, the Issuing Authority and the Licensee shall implement the provisions of Section 627 of the Cable Act, 47 U.S.C. 547, by transferring the Cable System to the Town or a subsequent licensee in accordance with 47 U.S.C. 547.

### **ARTICLE 3 SYSTEM DESIGN, CONSTRUCTION AND OPERATION**

#### **Section 3.1 AREA TO BE SERVED [SEE G.L.c. 166A §3(a)]**

(a) The area to be served is the entire Town of Barnstable. Service shall be provided to every dwelling occupied by a person requesting Cable Service, provided that the Licensee is able to obtain from property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Communications Act of 1984, Licensee acknowledges that as of the execution date of this License, the northwest section of the Town in the Sandy Neck region has not been provided service. Licensee shall provide service to such area within ninety (90) days of license execution, as amended.

(b) Provided Licensee has at least forty-five (45) days prior notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, it shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame. If a substantial quantity of cable is required for a large subdivision and said quantity is not in stock, the Licensee shall be allowed additional time for said installation. The Issuing Authority, or its designee, shall exercise reasonable efforts to have the Planning Board and developers give timely notice of trenching and underground construction to the Licensee.

#### **Section 3.2 SUBSCRIBER NETWORK**

(a) The Licensee shall make available to all residents of the Town a minimum seven hundred fifty Megahertz (750 MHz) Cable Communications System, fed by means of a fiber-optic transportation cable network, fully capable of carrying at least ninety-four (94) NTSC video channels in the downstream direction and four (4) NTSC video channels in the upstream direction.

(b) Pursuant to the terms of the Social Contract between Licensee and the FCC, the Licensee agrees not to file a cost of service filing to recoup the costs of this rebuild or treat the cost of this rebuild as an external cost pass through or basis for rate adjustment.

(c) During the term of this License, Licensee shall use reasonable efforts to employ state of the art technology in the operation of the Cable Communications System taking into consideration the costs of doing so.

(d) Licensee shall maintain a headend in the Town of Barnstable or an adjacent Town. In the event Licensee wishes to relocate its headend to a location other than this, it shall first certify to the Issuing Authority that no degradation in signal quality shall occur from such relocation.

(e) The Cable System shall be technically capable of transmitting Town-specific access programming and commercial programming, and shall have such other technical features as are described in the Form 100.



### **Section 3.3 SERVICE TO RESIDENTIAL DWELLINGS: STANDARD DROP**

The Licensee shall make its service available to every residential (non-commercial) dwelling unit in the service area in the Town regardless of the type of dwelling, or its geographical location. Installation costs shall be nondiscriminatory except that an additional charge for time and materials may be made for customized installation within a subscriber's residence or except when Licensee is engaged in marketing promotions. Any dwelling unit within one hundred fifty feet (150 ft.) of the cable plant for an aerial drop, or one hundred fifty feet (150 ft.) for an underground drop, shall be entitled to a standard installation rate, however, Licensee may reasonably charge subscribers for nonstandard and customized installations. Subscribers may be charged for drops in excess of the standard footage for materials and labor, and upon request, subscribers shall be provided an itemized cost for the same prior to acceptance of the terms for such non-standard drop.

### **Section 3.4 INSTITUTIONAL NETWORK ("I-NET")**

(a) Within eighteen (18) months from the execution of this License, the Town shall notify Licensee if it wishes Licensee to construct and operate an I-Net on behalf of the town.

(b) If the Town elects construction of an I-Net, such advanced Institutional Network ("I-Net") may be an all fiber network, at the Town's election. The advanced I-Net will be capable of transmitting composite video and high speed data from and among those buildings listed in **Schedule 3.4** as specified by the Issuing Authority attached hereto. Said I-Net may be used for school building Internet access as well as point-to-point administration networking. A design plan for such I-Net shall be submitted to the town within ninety (90) days of the Town's request provided no additional locations are added, in which case an appropriate extension of time will be granted to incorporate design changes, and construction shall be completed within (6) months of said submission.

(c) If prior to construction, the Licensee determines that the I-Net's technical design described above does not meet the Town's requirement, or that another design is more appropriate, Licensee may, in its reasonable discretion following notice and consultation with Issuing Authority, alter the design of the I-Net provided that such alterations do not fundamentally change or reduce the I-Net's capabilities and channel capacity.

(d) The Licensee shall provide one (1) I-Net drop, free of charge, to each of the municipal buildings identified in **Schedule 3.4**. The Licensee shall provide one (1) I-Net drop, free of charge, to any new municipal or school building which lies along its I-Net route within ninety (90) days of a written request by the Issuing Authority. Additional I-Net drops, if any, in excess of the above shall be installed by the Licensee subject to payment by the Town of the Licensee's actual costs for time and materials.

(e) Unless otherwise provided herein, the Town and its designated I-Net users shall be solely responsible for any and all user terminal interface equipment including but not limited to, modems, routers, bridges, modulators, demodulators and associated computer and video production equipment.

(f) The Licensee shall be responsible for any headend, I-Net hub site or other equipment necessary to make the I-Net function, including responsibility for the underlying I-Net or distribution cables, wires, amplifiers and switching equipment. Upon request, the Town agrees to

provide the Licensee with appropriate space for the I-Net hub site. The Licensee and the Town agree to work jointly to ensure said space meets the criteria listed in **Schedule 3.4(f)** attached hereto. The Licensee shall also be responsible for equipment to enable the I-Net to interact with the Subscriber Network such that I-Net transmissions may be transmitted upstream to the headend via the I-Net channel and downstream on an Access Channel.

(g) The Licensee shall hold all rights and title in the physical property of the advanced I-Net, but shall provide the Town the right to use the I-Net, throughout the remaining term of this License subject to the following conditions:

The Town shall pay a use fee equal to \$17,000.00 per mile, or the actual cost of construction, if less, or portion thereof, of miles in the I-Net. The total use fee shall then be credited, at the Town's direction, in equal annual increments over the remaining years in the license term against either the Issuing Authority payment as specified in Section 5.3 (a) of this License, or the capital fund as specified in Section 5.4 (c) of this License.

The Town may not lease out any portion of the I-Net to any third party or allow the I-Net to be used by a third party for commercial purposes.

(h) The Town shall have the right to use the I-Net, free of charge, for the transmission of data and composite video.

(i) The Licensee shall be responsible for maintenance of the I-Net in accordance with the following provisions:

- (1) Licensee shall maintain I-Net signal quality as prescribed by FCC Rules and Regulations, Part 76.
- (2) Licensee shall reasonably determine and assign the transmit and receive frequencies for all I-Net users subject to reasonable consultation with the users.
- (3) Licensee shall determine and design the correct signal strength levels necessary at each location.
- (4) The Town may install its preferred equipment, provided, however, the data equipment to be used has been reasonably pre-approved by Licensee in advance of connection to the I-Net. Pre-purchase approval is recommended.
- (5) The Town shall designate a certified, experienced data communications professional (ex., MIS/LAN manager, network engineer, consultant, etc.). This person shall be responsible and accountable to the Town for all setup and ongoing operations of LAN to LAN connectivity over the I-Net.

Any user who causes interference or renders the I-Net system ineffective shall be notified and disconnected by Licensee if after consultation with the Issuing Authority, or its designee, said user fails to take reasonable corrective action.

### **Section 3.5 SERVICE TO PUBLIC BUILDINGS AND SCHOOLS**

(a) Licensee shall provide, free of charge, one (1) drop, outlet and the Standard Service Package, including the level of service which includes *Cable in the Classroom* programming as long as Licensee receives *Cable in the Classroom* programming under agreements or pursuant to terms similar to those which are currently in place, excluding premium channels, to public buildings along its cable routes upon written request of the Issuing Authority.

(b) Any locations in the Barnstable public schools which have been wired for residential

cable service shall continue to receive an activated outlet of standard service in accordance with subsection (a) above. Any public classrooms which have not been wired for cable service pursuant to the obligation for such wiring provided for in the predecessor license, shall be wired at Licensee's sole cost and expense.

(c) All future newly constructed classrooms shall be wired for the Standard Service Package within 200 feet of the cable plant, at Licensee's sole cost and expense.

(d) All future municipal buildings along the cable routes shall receive, free of charge, one (1) drop, outlet and the Standard Service Package.

(e) If necessary to receive the Standard Service Package, Licensee will provide a converter to any classroom or municipal building entitled to service under this Section at no charge to the Town.

### **Section 3.6 STANDBY POWER**

The Licensee shall maintain a minimum of three (3) hours standby power at the headend facility and any node facilities servicing the Town. Such standby power shall have continuous capability, contingent upon availability of fuel necessary to operate generators, and shall become activated automatically upon the failure of normal power supply. Upon written request, Licensee shall furnish evidence to the Issuing Authority on an annual basis that such standby power has been tested annually and is in good repair.

### **Section 3.7 TREE TRIMMING**

In the installation, maintenance, operation and repair of the poles, cables, wires and all appliances or equipment of the Cable System, the Licensee shall avoid unnecessary damage to trees whether on public or private property in the Town and shall cut or otherwise prune such trees only to the least extent necessary. No cutting of trees on Town property shall occur except upon a permit in writing from the Town Tree Warden or other person designated by the Department of Public Works provided that such written permit is a requirement of general applicability and not specific to Licensee or cable television operators. Licensee shall make its best effort to secure the permission of the property owner prior to reasonable tree trimming.

### **Section 3.8 UNDERGROUND WIRING OF UTILITIES**

In areas of the Town having both telephone lines and electric utility lines underground, whether required by ordinance or not, all of Licensee's cable and wires shall be underground. Licensee shall maintain membership and participate in the Massachusetts "DIG-SAFE" program.

### **Section 3.9 PEDESTALS AND VAULTS**

In any cases in which vaults housing passive devices are to be utilized, in the Town Public Ways or within the Town public layout, such equipment must be flush at ground level or completely buried (in accordance with applicable Public Works Department regulations); provided, however, that Licensee may place active device (amplifiers, line extenders, power supplies, etc.) in a low-profile electronic control box, at Town approved locations to be determined when Licensee applies for an underground permit, which shall not be unreasonably denied and subject to other requirements of general applicability.

### **Section 3.10 PRIVATE PROPERTY**

Licensee shall be subject to all laws, bylaws or regulations regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable Communications System in the Town. Licensee shall promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, upgrade, installation, operation or maintenance of the Cable System at its sole cost and expense.

### **Section 3.11 RESTORATION TO PRIOR CONDITION**

Whenever the Licensee takes up or disturbs any pavement, sidewalk or other improvement of any private way, Public Way or public place, it shall be replaced and the surface restored in as good condition as before entry as soon as possible, subject to approval of the Town's Department of Public Works or their designee provided that such approval is a requirement of general applicability and not specific to Licensee or cable television operators. If the Licensee fails to make such restoration within a reasonable time, the Town may fix a reasonable time and notify the Licensee in writing of the restoration required and the time fixed for performance. Upon failure of the Licensee to comply within the time specified, the Town may cause proper restoration and repairs to be made and the reasonable expense of such work as itemized shall be paid by the Licensee upon demand by the Town.

### **Section 3.12 COOPERATION WITH BUILDING MOVERS**

The Licensee shall, upon thirty (30) days request of any person holding an appropriate permit issued by the Town, temporarily raise or lower its lines to permit the moving of any building or other structure. The expense of such raising or lowering shall be in accordance with applicable law.

### **Section 3.13 RELOCATION OF FACILITIES**

The Licensee shall, at its expense, temporarily or permanently relocate any part of the Cable System when required by the Town for good reason such as traffic, public safety, street construction, installation of sewers, drains, water pipes, power or signal lines or setting of new or replacement utility poles. In this respect, the Licensee shall be treated the same as other affected utilities.

### **Section 3.14 RELOCATION OF FIRE ALARMS**

The Licensee shall reimburse the Town at cost for any reasonable expense including materials and labor caused by relocation of any fire alarm cable or equipment to make poles ready for Licensee's cable. The Town shall cooperate in this relocation so as to minimize delay in Licensee's construction schedule.

### **Section 3.15 SERVICE INTERRUPTION**

Licensee may interrupt service for the purpose of repairing, upgrading or testing the Cable System and, if practical, Licensee shall do so only during periods of minimum use, and only after a minimum of twenty-four (24) hours notice to affected subscribers.

### **Section 3.16 CONSTRUCTION AND MAINTENANCE STANDARDS**

(a) The Licensee shall construct and operate a Cable Communications System and render service to subscribers consistent with all applicable regulations during the term of this License. The

construction, maintenance and operation of the Cable System for which this License is granted shall be in conformance with the applicable provisions of the National Electrical Code (Article 820), the National Electrical Safety Code, the National Television Standards Code and the rules and regulations of the Occupational Safety and Health Administration (OSHA), the Division and the FCC. Copies of any technical performance tests that may be required under FCC rules and regulations shall be submitted simultaneously to the Town.

(b) All structures, lines, equipment, and connections in, over, under, and upon streets, sidewalks, alleys, and Public Ways and places of the Town, wherever situated or located, shall at all times be kept and maintained in a safe condition and in good order and repair.

### **Section 3.17 RIGHT OF INSPECTION**

(a) In the event the Issuing Authority reasonably suspects non-compliance with Cable System construction and maintenance terms of this License, the Issuing Authority or its designee(s) shall have the right to inspect all construction, installation and/or upgrade work performed subject to the provisions of this License and to make such tests as it shall deem necessary to ensure compliance with the terms and conditions of this License and all other applicable law. Any such inspection shall be conducted at reasonable times upon reasonable notice to Licensee except that inspection of cable wires in plain view on a Public Way shall not require any such notice. Licensee shall have the right to be present at any such inspection. Any such inspection shall not interfere with the Licensee's operations.

(b) Any tests conducted by the Town shall be at the sole cost and expense of the Town and shall have the prior written approval of the Licensee. Unless otherwise mutually agreed upon, the Town shall give at least thirty (30) days prior notification to the Licensee of its intention to conduct any testing.

### **Section 3.18 EMERGENCY REMOVAL OF PLANT**

If, at any time, in case of fire or disaster in the Town, it shall become necessary in the reasonable judgment of the Issuing Authority or any designee, to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable Communications System, the Town shall have the right to do so at the sole cost and expense of Licensee. Licensee shall be eligible, where applicable, for reimbursement under any applicable government program providing for reimbursement.

### **Section 3.19 EMERGENCY AUDIO ALERT**

(a) Within ninety (90) days from the completion of the rebuild, the Licensee shall provide an emergency audio override alert system which system shall be in accordance with applicable FCC emergency alert rules. The Issuing Authority will designate two (2) individuals responsible for accessing said emergency system and shall designate two (2) successor individuals who may access the emergency system in the event of the absence or unavailability of the foregoing individuals. The designated individual(s) may gain access to the system by using a touch-tone telephone to override channels on the Cable System with the emergency telephone message. The audio alert shall be effective over the maximum number of channels that can be overridden through equipment available to the cable industry for such purposes and shall provide an audio signal over blank screen in its method of emergency communication. The emergency audio override shall be activated and in use upon completion of the rebuild, however, if the FCC earlier promulgates rules on emergency

overrides, said service will be in accordance with the FCC rules. The Town shall hold the Licensee harmless in connection with the Town's negligent use of said emergency audio override. Licensee shall test the emergency override annually and shall report on same to the Issuing Authority.

(b) Licensee shall provide A/B switches, upon Issuing Authority's written request, for not more than ten (10) municipal outlets, to facilitate switching from cable to broadcast transmission during a loss of service.

(c) The Licensee shall not be required to provide a locally accessed emergency alert override if such override capabilities would technically conflict with equipment available to comply with the FCC Emergency Alert System regulations and there is no compatible equipment in the marketplace that can be installed (to comply with FCC regulations) at substantially equivalent cost.

(d) An emergency alert system made available through a regional headend shall satisfy this provision.

### **Section 3.20 FUTURE TECHNOLOGY**

(a) In order to maintain a leadership position in providing cable television service in Barnstable, at any time during the fourth (4<sup>th</sup>) and seventh (7<sup>th</sup>) year of the License, the Issuing Authority may request that the Licensee provide new technologies necessary to give the Cable System the capability of offering cable services available in at least ten municipalities served by MediaOne in Massachusetts comparable in size (number of Subscribers plus or minus ten (10%) percent) to the Barnstable Cable System. This shall not include any cable services offered as pilot or beta program.

(b) At the request of the issuing Authority, the Licensee shall review with the Issuing Authority changes in relevant cable technology that might benefit Barnstable Subscribers. For purposes of this subsection, "relevant cable technology" shall be defined as technologies such as, but not limited to, installation of fiber optic cable, converters compatible with video cassette recorders (VCRs) and cable-ready television sets, remote control devices, high definition television (HDTV), audio services and new scrambling/descrambling processes. It shall not include any experimental technologies or technologies not widely accepted in the cable industry. Upon request, the Licensee shall also submit a report to the Town, which lists the comparable cable systems defined in subsection (a) and details the status of relevant cable technology. This report shall also provide cost amortization and other relevant information of like-size systems and how the Licensee intends to evaluate these new technologies.

(c) In order for the Issuing Authority to exercise the new technology option pursuant to this Section, the following requirements must be met:

At the request of the Issuing Authority, the Licensee shall conduct a statistically valid survey of Barnstable Subscribers describing the new technology and the cost to Subscribers associated with that new technology. Said survey shall be approved by the Issuing Authority which approval shall not be arbitrarily or unreasonably withheld. Licensee shall conduct said survey within sixty (60) days from receiving the Issuing Authority's approval of survey. The Licensee and the Town shall share the costs of said survey.

The Issuing Authority shall conduct at least one public hearing to consider the need uses for the additional channel capacity and need and uses of new technologies and the cost for such technology. If the Issuing Authority holds a public hearing a period of at least sixty (60) days notice will be provided to the Licensee, and

all interested parties including the Licensee shall be given an opportunity to be heard.

The new technology should be technically and economically feasible. Standard GAAP depreciation schedules shall be used to amortize the costs of the new technology. If the licensee is unable to make a reasonable return on its investment within the time remaining on the License term, taking into account all revenue sources, expenses and other financial data, the parties may agree to commence an early renewal of the License.

(d) The Issuing Authority may exercise its option of giving the Licensee twelve (12) months written notice to be given no later than six (6) months after the date of the hearing held pursuant to subsection C.

(e) In the event the Issuing Authority exercises the new technology option pursuant to this Section and the Licensee disagrees with the Issuing Authority's determination as to technical and/or economic feasibility, the Licensee may, by giving the Issuing Authority notice thereof within fourteen (14) days after the Issuing Authority notifies the Licensee of its determination, require that the disagreement be settled by arbitration pursuant to Section 7.22. In such event, the date upon which the Licensee would otherwise be required to make such new technology available shall be extended for a period of time equal to the time running from the date upon which the arbitrators announce their decision not to exceed sixty (60) days of extension.

### **Section 3.21 SYSTEM INTERCONNECTION**

The Licensee shall cooperate with any interconnection corporation, regional interconnection authority or municipal, county, state or federal regulatory agency which may be established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of Barnstable. Licensee shall make such interconnections at the directive of the Issuing Authority, but shall only be responsible for its fair share cost with respect to the interconnection. Furthermore, Licensee shall periodically make its regional local channel available for programming requested by the aforementioned entities or agencies.

### **Section 3.22 WIRING BY SUBSCRIBER**

(a) Subscribers, or a qualified contractor at the subscriber's expense, shall have the right to install cable for system interconnection within any building which they own. Such installation shall be conditioned upon and shall conform to:

All applicable building and electrical codes;

The Licensee's published guidelines on file with the Issuing Authority, the Building Inspector, and the Wiring Inspector, and as referenced in Schedule 3.22.

(b) Specifications for all equipment to be used in the installation, by the subscriber shall be approved by the Licensee prior to installation. The Licensee shall inspect the subscriber's installation before cable service is provided to the subscriber. Any corrections required by the Licensee must be corrected to the Licensee's guidelines and satisfaction, while such costs for corrections will be borne by the subscriber.

(c) If the Licensee makes a service/repair visit because of a reported problem and subsequently determines that the problem was caused by wiring and/or improper equipment installed by the subscriber, the Licensee may assess a maintenance service charge to the subscriber.

(d) Should the Licensee notify subscriber in writing that a directly connected device is

causing harm or interference to the cable system, the Licensee may require that the subscriber discontinue use of and disconnect such device. If such a notice is not practicable, the Licensee may temporarily discontinue service. In all such cases the Licensee shall promptly notify the subscriber in writing of the discontinuance, and of his/her right to bring the actions of the Licensee to the attention of the Issuing Authority.

(e) Should any subscriber-installed equipment permanently damage any of the Licensee's equipment, the subscriber shall be liable for the repair costs up to the current depreciated value of such equipment.

(f) The Subscriber shall be able to wire additional outlets within his/her residence at no additional cost for service, provided no Licensee equipment is required, subject to Licensee's rates and charges as allowed by applicable Federal rate regulations.



## ARTICLE 4

### RATES AND PROGRAMMING

#### Section 4.1 INITIAL RATES

The initial rates for all programming, installation and equipment which are in effect on the Effective Date of this License are listed in **Schedule 4.1** attached hereto. These rates are provided for informational purposes only and are subject to change at Licensee's sole discretion pursuant to applicable law.

#### Section 4.2 RATE RE-REGULATION

The Issuing Authority reserves the right to regulate rates for cable service to the extent such regulation is allowed at this time, or hereafter, under the applicable federal and state law.

#### Section 4.3 PROGRAMMING CATEGORIES

Licensee has offered and shall provide the following cable services:

- (1) the broad categories of broadcast stations, satellite services and other cable services set forth in **Schedule 4.3** attached hereto;
- (2) all PEG Access channels required by Section 5.1 (Community and PEG Access Programming) of this License.

#### Section 4.4 PROGRAMMING TIERS

(a) The initial programming and services offered by Licensee are listed in **Schedule 4.4**, attached hereto. This schedule of programming tiers is provided for informational purposes only and is subject to change at Licensee's sole discretion pursuant to applicable law.

(b) Nothing in this section shall preclude any right of the Issuing Authority to participate in the formulation of a basic cable programming service for the Town, should such right be granted to the Town under applicable federal or state law in the future.

#### Section 4.5 LEASED ACCESS

Pursuant to the Cable Act, 47 U.S.C. 532 (b) (iii) (B), Licensee will make available channel capacity for commercial use by persons unaffiliated with Licensee.

#### Section 4.6 SIGNAL RETRANSMISSION

Signals received by Licensee shall be retransmitted to subscribers in their original, unadulterated form, in accordance with applicable law.

#### Section 4.7 CHANNEL LINEUP

Licensee shall notify the Issuing Authority and the subscribers, in advance, each time its channel lineup changes including all channel reassignments, additions or deletions, insofar as it is within the Licensee's reasonable ability to provide such notice. If notice cannot be given in advance, then it shall be given within fourteen (14) days of such changes. In the event the channel lineup is changed during the term of the License, Licensee shall provide each subscriber with an updated channel lineup.

#### Section 4.8 REMOTE CONTROLS

Licensee shall allow subscribers to purchase, from parties other than the Licensee, and to

utilize remote control devices which are deemed compatible with the converter installed by Licensee. Licensee may require a separate reasonable charge for use of the remote control capacity of its converter.

#### **Section 4.9 DISCOUNT**

Licensee shall offer a ten percent (10%) discount on the basic broadcast level or component of service to all head of households, who are also Medicaid eligible at their permanent address. In order to qualify for such discount, affected persons must present evidence of such eligibility to Licensee.

### **ARTICLE 5 COMMUNITY PROGRAMMING AND ACCESS COMMITMENTS AND POLICIES**

#### **Section 5.1 DEDICATED PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS (PEG)**

License shall provide the Town with four downstream PEG access channels.

(b) One channel for governmental purposes shall be under the management of the Issuing Authority, or its designee.

(c) One channel for educational purposes shall be under the management of the Barnstable School Department.

(d) One channel shall be dedicated to Cape Cod Community College, (the "College,") provided however that the College reasonably remunerates MediaOne for its revenue-producing use of the channel, not to exceed a payment of 15% of such gross annual revenues, and furthermore, that the College reasonably provides use of its channel to Barnstable County governmental and quasi-governmental agencies for the purpose of transmitting programs of regional interest to Cape Cod residents.

(e) One channel for public access purposes shall be under the management of Cape Cod Community Television Corporation, in accordance with the terms of the agreement found in **Schedule 5.1** of this License.

#### **Section 5.2 UPSTREAM ORIGINATIONS**

Licensee shall provide remote video and audio origination capability from Barnstable Town Hall, Barnstable High School, Cape Cod Community College, Police Station, Marston Mills School, Municipal Airport, and, subject to the reasonable approval of the Licensee based on proximity to the cable plant, and one additional location designated by the Issuing Authority. Licensee shall provide fixed or portable modulators to these locations upon request of the Issuing Authority. Licensee shall configure upstream originations such that programming then goes downstream on the appropriate PEG channel. This provision may be fulfilled by I-Net connections; otherwise by direct connection within 12 months of request by the Issuing Authority.

#### **Section 5.3 COMPENSATION FOR USE OF THE PUBLIC WAYS: PEG FRANCHISE FEES**

In compensation for use of the Town's public ways, Licensee shall make the following

payments to the Issuing Authority, or its designee, said payments to be used exclusively to support operations related to the PEG channels:

(a) To the Issuing Authority, or its designee, Licensee shall pay annually, a franchise fee equal to 3.00% of its annual gross revenues, except as provided for in section (c) below. The first such annual base period shall be January 1, 1999 – December 31, 1999. These fees shall be used exclusively on behalf of educational and governmental access and shall not be subject to the Town's general fund appropriations. All franchise fees shall be paid on a quarterly basis, within 60 days of the close of each quarter.

(b) To Cape Cod Community Television Corporation (the "Corporation,") Licensee shall pay, on the same timeframe and quarterly basis, a base franchise fee equal to 1.25 % of its annual gross revenues. The Corporation may apply each year for an additional .25% of Licensee's gross revenues to the Issuing Authority by demonstrating to the Issuing Authority that it has raised funds equal to such .25%, from sources other than the Licensee. The Issuing Authority may disburse such .25% match, at its discretion.

(c) The base franchise fee payment to the Corporation shall be further increased, up to 1.75%, not to exceed the largest base franchise fee payment established by any of the other original Towns serviced by the Corporation as provided for in their respective license

agreements with Licensee. At such time, the franchise fee payment payable to the Issuing Authority under section (a) above shall be reduced by a concomitant amount.

(d) Within 30 days of execution of this License, Licensee shall advance the sum of \$75,000 to the Issuing Authority, or its designee, to be credited in equal increments, with the time value of money at prime + 1%, against future franchise fee payments due to the Issuing Authority.

#### **Section 5.4 CAPITAL FUNDING FOR PEG CHANNELS**

(a) Within 30 days of the execution of this License, Licensee shall make a capital payment, on behalf of the Town of Barnstable, to Cape Cod Community Television Corporation, in the amount of \$120,000.00, to further the goals of public access programming and utilization.

(b) Within 30 days of the execution of this License, Licensee shall make a capital payment, to support the development of educational and governmental access programming or utilization, to the Issuing Authority, in the amount of \$130,000.00.

(c) Commencing in the year 2000, and for every year thereafter within the term of this License, Licensee shall, annually, on or before April 1, make a capital payment, to support the development of educational and governmental access programming or utilization, in the amount of \$45,000.

### **Section 5.5 VIRTUAL PRIVATE NETWORK PILOT PROJECT**

The Licensee, upon Issuing Attorney's request, shall furnish up to forty hours of consultation, to help establish a Virtual Private Network among and between governmental and non-profit sites identified by the Issuing Authority, through utilization of Licensee's Internet Service. Furthermore, Licensee shall provide a 12% discount off its stated municipal rate for Internet Service for any five-year period during the term of this License.

### **Section 5.6 UNDERWRITING**

Individual access producers may, in accordance with standards applicable to non-commercial public television stations, solicit and include notices of underwriting support.

### **Section 5.7 INTERNET ACCESS**

In accordance with the Social Contract entered into by Licensee and the FCC, the Licensee will within one (1) year after offering on-line service for personal computers commercially available in the Town, and upon the request from the Barnstable School Department, provide each school in the Town with one (1) free connection to such on-line service. At a minimum, such on-line service will provide access to the Internet. Each connected school will receive one (1) free cable modem and free, unlimited access to the on-line service. Said modems and on-line service shall continue to be provided to the Town until March 1, 2002.

## **ARTICLE 6**

### **SUBSCRIBER RIGHTS AND CONSUMER PROTECTION**

#### **Section 6.1 BUSINESS OFFICE**

Licensee shall maintain and operate a business office in the Town of Barnstable for general business purposes and also for the purpose of receiving expeditiously and resolving all complaints, including without limitation, those regarding service, equipment malfunctions or billing and collection disputes. The business office shall be open for walk-in business on weekdays, weeknights and weekends in accordance with FCC regulations. The business office shall be computer interconnected with its main customer service office operated by Licensee and shall, as a minimum, be staffed with at least one customer service representative. Licensee shall provide all subscribers or commercial users with at least thirty (30) days prior written notice of additions in business office hours.

#### **Section 6.2 TELEPHONE ACCESS**

(a) The Licensee shall maintain a publicly listed, toll free, customer service number for the general purpose of servicing customer needs including receiving and resolving complaints, including without limitation, those regarding service, equipment malfunctions or billing and collection disputes. Licensee shall have available trained customer service personnel to receive and log service calls and complaints from 9:00 AM to 5:00 PM Monday through Friday. Licensee shall comply with the FCC standards regarding response to customer phone calls.

(b) Licensee shall provide a "live" telephone answering service during other times (5:00 PM to 9:00 AM) which shall be informed how to respond in case of emergencies requiring standby technicians. Such answering service shall be also instructed to call upon Licensee's standby personnel when it is evident that the complaints received are indicative of a problem affecting three (3) or more subscribers.

#### **Section 6.3 INSTALLATIONS, OUTAGES AND SERVICE CALLS**

Licensee agrees to be bound by the customer services obligations adopted by the FCC in 47 C.F.R. § 76.309(c), as they may hereafter be amended, a copy of which is attached as **Schedule 6.3.**

#### **Section 6.4 INSTALLATION**

(a) Licensee shall make a good faith effort to respond to all requests for aerial installation within seven (7) days of such request, or at such other time as is mutually agreed upon by Licensee and said subscriber. Underground installation shall be completed as expeditiously as is practicable. If arranging appointments for installation, Licensee shall specify in advance whether such will occur in the morning or afternoon, or a narrower interval, if possible, and will make reasonable efforts to install at times convenient to subscribers (including times other than 9:00 AM to 5:00 PM weekdays).

(b) Licensee shall be responsible for picking up and changing converters at subscriber's request at no additional charge where such converter changeout is initiated by Licensee to provide additional channels that have become available as a result of Licensee's expansion of channel capacity. In order to improve service, Licensee reserves the right to offer subscribers the option of bringing converters in to a Licensee office for drop-off or exchange themselves.

### **Section 6.5 MINIMUM SUBSCRIBER INFORMATION**

Licensee will provide all prospective subscribers with complete, clear and concise written information before consummation of any agreement for initial installation of cable service. Such sales materials shall clearly disclose the price and other information concerning Licensee's lowest cost basic service. Such information shall include but not be limited to the following:

- (a) All service and rates, deposits if applicable, installation costs, additional television set charges, service upgrade or downgrade charges, and relocation of cable outlet charges.
- (b) Written information concerning billing and termination procedures, procedures for ordering changes in or termination of services, and all refund policies, including the availability of rebates or credits for loss of service.
- (c) Written information concerning the utilization of video cassette recorders (VCRs) with cable service(s), including the cost for hooking up VCRs so that they function as manufactured, and any other associated VCR costs or charges.
- (d) Written information concerning the availability of special equipment such as VCR kits, A/B switches, and lockboxes and all other equipment notifications contained in 207 CMR 10.00 et. seq. (See **Schedule 6.5** attached hereto.)
- (e) Written information concerning privacy policies, pursuant to state and federal law.
- (f) Written information concerning steps to take in the event of loss of service.

### **Section 6.6 PARENTAL CONTROL**

(a) Upon request, and at no separate, additional charge, the Licensee shall provide subscribers with the capability to control the reception of any channel on the Cable Communications System.

(b) The Issuing Authority acknowledges that the parental control capability may be part of a converter box and the Licensee may charge subscriber for use of said box.

### **Section 6.7 BILLING AND TERMINATION PROCEDURES**

Licensee will comply with the regulations of the Division, 207 CMR 10.00 et. seq., as those regulations may be amended from time to time, and will inform all prospective subscribers of complete information about rates and charges for different levels of services and service calls, billing and collection procedures, procedures for ordering changes in or termination of services, and refund policies, before consummation of any agreement for installation of service.

### **Section 6.8 VOLUNTARY DISCONNECTION OF SERVICE**

Subscribers who request full disconnection of cable service shall not be responsible for further charges for such service upon actual termination of service or after seven (7) days notice to Licensee, whichever occurs first. Licensee shall make a good faith effort to disconnect service as soon as possible after requested to do so by a subscriber. A subscriber who requests full disconnection of cable service shall make a good faith effort to return all of his or her customer premises equipment to Licensee's local business location or any other reasonable location Licensee may designate.

### **Section 6.9 BILLING DISPUTES**

In the event of a bona fide billing dispute, Licensee will resolve each dispute within fifteen (15) working days of receiving notification from the subscriber. The subscriber shall be responsible for paying only that portion of the bill that is not in dispute. In no event shall Licensee disconnect or assess a late payment charge from the subscriber for failure to pay bona fide disputed bills, or portions thereof, upon notice of said dispute.

#### **Section 6.10 PROTECTION OF SUBSCRIBER PRIVACY**

(a) Licensee shall respect the rights of privacy of every subscriber and/or user of the Cable Communications System and shall not violate such rights through the use of any device or signal associated with the Cable System, and as hereafter provided.

(b) Licensee shall comply with all privacy provisions contained in this Section and all other applicable federal and state laws including, but not limited to, the provisions of Section 631 of the Cable Communications Policy Act of 1984 and Title 18 United States Code Section 2520.

(c) Licensee shall be responsible for carrying out and enforcing the Cable System's privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy.

(d) Licensee shall notify all third parties who offer cable services in conjunction with Licensee, or independently over the Cable System, of the subscriber privacy requirements contained in this License.

#### **Section 6.11 PRIVACY WRITTEN NOTICE**

Prior to the commencement of cable service to a new subscriber, and annually thereafter to all Cable System subscribers, Licensee shall provide a comprehensive and easily understandable written document explaining Licensee's practices regarding the collection, retention, uses, and dissemination of personal subscriber information, and describing Licensee's policy for the protection of subscriber privacy.

#### **Section 6.12 DISTRIBUTION OF SUBSCRIBER INFORMATION**

Licensee and its agents or employees shall not, without giving subscribers an opportunity to prevent disclosure, disclose to any third party a subscriber's name or address. Said opportunity to prevent disclosure shall be provided to each subscriber annually through a written notice. A subscriber shall have the right, at any time, to request Licensee not to disclose to any third party data identifying the subscriber either by name or address and Licensee shall abide by this request. Any such disclosure shall be in accordance with 47 U.S.C. 631.

#### **Section 6.13 POLLING BY CABLE**

No poll or other upstream response of a subscriber or user shall be conducted or obtained unless the program of which the upstream response is a part shall contain an explicit disclosure of the nature, purpose and prospective use of the results of the poll or upstream response, unless the program has an informational, educational function which is self evident. Licensee or its agents shall release the results of upstream response only in the aggregate and without individual references.

#### **Section 6.14 INFORMATION WITH RESPECT TO VIEWING HABITS AND**



## **SUBSCRIPTION DECISIONS**

Licensee or its agents or its employees shall not make available to any third party, including the Town, information concerning the viewing habits or subscription package decisions of any individual subscriber except as required by law.

### **Section 6.15 SUBSCRIBER'S RIGHT TO INSPECT AND VERIFY INFORMATION**

(a) Licensee shall make available for inspection by a subscriber at a reasonable time and place all personal subscriber information that Licensee maintains regarding said subscriber.

(b) A subscriber may obtain from Licensee a copy of any or all of the personal subscriber information regarding him or her maintained by Licensee. Licensee may require a reasonable fee for making said copy.

(c) A subscriber or user may challenge the accuracy, completeness, retention, use or dissemination of any item of personal subscriber information. Such challenges and related inquiries about the handling of subscriber information, shall be directed to Licensee's General Manager.

### **Section 6.16 MONITORING**

Neither Licensee or its agents nor the Town or its agents shall tap or monitor, arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal, input device, or subscriber outlet or receiver for any purpose, without the prior written authorization of the affected subscriber or commercial use; provided, however, that Licensee may conduct system wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, or billing for pay cable services or pay-per-view. Licensee shall report to the affected parties and all appropriate authorities any instances of monitoring or tapping of the Cable Communications System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Licensee. Licensee shall not record or retain any information transmitted between a subscriber or commercial use and any third party, except as required for lawful business purposes Licensee shall destroy all subscriber information of a personal nature after a reasonable period of time except as authorized not to do so by the affected subscriber.

### **Section 6.17 EMPLOYEE IDENTIFICATION CARDS**

All of Licensee's employees, including repair and sales personnel, entering private property must have visible employee photo-identification card.

### **Section 6.18 TECHNICAL AND CUSTOMER SERVICE STAFF LEVELS**

Licensee will employ enough service technicians and customer service representatives to meet its obligations under this License.

### **Section 6.19 NON-DISCRIMINATION**

Licensee shall not discriminate against any person in its solicitation, service or access activities, if applicable, on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the Town, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. Licensee shall be subject to all other requirements of federal and state regulations concerning non-discrimination.

**Section 6.20 MUNICIPAL ACCESS TO LICENSEE'S SURVEY MATERIALS**

In the event the Licensee surveys the Barnstable subscriber population to test for response to particular programming preferences, or for other reasons, it shall, upon request of the Issuing Authority share the results of its programming surveys so long as the Licensee does not consider the questions and/or the results proprietary.

**Section 6.21 POST REBUILD REMARKETING**

Licensee shall use its best efforts to notify Barnstable subscribers concerning new services, rates and any other benefits which might be derived from the rebuilt Cable system. Specifically, Licensee shall insure that marketing materials make clear that subscribers may select from within all levels of service which it offers.

## **ARTICLE 7 LICENSE ADMINISTRATION**

### **Section 7.1 REGULATORY AUTHORITY**

The Issuing Authority and/or its designee(s) shall be responsible for the day to day regulation of the Cable Communications System. The Issuing Authority shall monitor and enforce Licensee's compliance with the terms and conditions of this License. The Issuing Authority shall notify Licensee in writing of any instance of non-compliance and may direct that such non-compliance be corrected within thirty (30) days to the reasonable satisfaction of the Issuing Authority, unless a longer period is specified herein, or is mutually agreed upon by the Issuing Authority and Licensee.

### **Section 7.2 INDEMNIFICATION**

(a) The Licensee shall indemnify and hold the Town and its agents, harmless at all times during the term of this License from any and all claims alleged to be caused by Licensee's construction, installation, operation, or maintenance of any structure, equipment, wire or cable to be installed pursuant to the License or exercise of any of its rights under this License. Upon receipt of notice in writing from the Town, the Licensee shall at its own expense defend any such actions or proceedings. Indemnified expenses shall include without limitation, all out-of-pocket expenses, such as attorney's fees.

(b) In order for the Town to assert its rights to be indemnified, defended, or held harmless, the Town must:

- (1) promptly notify Licensee of any claim or legal proceeding which gives rise to such right;
- (2) the Town shall afford the Licensee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding, unless, however, the Town, in its sole discretion, determines that its interests cannot be represented in good faith by the Licensee and further acceptance of any non-monetary settlement or term involving injunctive relief or orders affecting the Town shall be subject to Town's consent; and
- (3) the Town shall fully cooperate with the reasonable requests of the Licensee in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (2) above.

### **Section 7.3 INSURANCE**

(a) The Licensee shall carry insurance throughout the term of this License and any removal period pursuant to G.L.c. 166A, Section 5(f) with the Town as a named insured with an insurance company authorized to conduct business in Massachusetts satisfactory to the Issuing Authority indemnifying the Town and the Licensee from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of its Cable System or cable-related activity. The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000). The amount of such

insurance for excess liability shall be Five Million Dollars (\$5,000,000) in umbrella form. Policy will contain a provision that the Issuing Authority will receive thirty (30) days written notice prior to any cancellation.

(b) The Licensee shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in the amount of One Million Dollars (\$1,000,000). Policy will contain a provision that the Issuing Authority will receive thirty (30) days written notice prior to any cancellation.

(c) All insurance coverage, including Workers' Compensation, shall be maintained throughout the period of this License. All expenses incurred for said insurance shall be at the sole expense of the Licensee. Policy will contain a provision that the Issuing Authority will receive thirty (30) days written notice prior to any cancellation.

(d) The Licensee shall provide Issuing Authority with certificate(s) of insurance for all policies required herein on an annual basis.

#### **Section 7.4 PERFORMANCE BOND**

(a) The Licensee shall maintain at its own expense throughout the term of this License a faithful performance bond running to the Town, with at least one good and sufficient surety licensed to do business in the Commonwealth of Massachusetts and reasonable approval by the Town in the sum of One Hundred Thousand Dollars (\$100,000). When the Cable System upgrade is complete, the amount of the bond shall be reduced to the sum of Twenty-five Thousand Dollars (\$25,000). Said bond shall be conditioned that the Licensee shall well and truly observe, fulfill and perform each material term and condition of this License and that in case of any failure to comply with any term and/or condition contained herein, the amount thereof shall be recoverable from said performance bond by the Town for all amounts resulting from the failure of Licensee to comply with any provision in this License.

(b) The performance bond shall be effective throughout the term of this License including the time for removal of facilities provided for herein, and shall be conditioned that in the event that Licensee shall fail to comply with any one or more provisions of this License, or to comply with any order, permit or direction of any department, agency, commission, board, division or office of the Town having jurisdiction over its acts, or to pay any claims, liens or taxes due the Town which arise by reason of the construction, upgrade, maintenance, operation or removal of the Cable Communications System, the Town shall recover from the surety of such bond all damages up to the limits insured by such bond, suffered by the Town as a result thereof, within thirty (30) days after a written request for same. Said condition shall be a continuing obligation of this License, and thereafter until Licensee has liquidated all of its obligations to the Town that may have arisen from the grant of this License or from the exercise of any privilege therein granted. Neither this Section, any bond accepted pursuant thereto, or any damages recovered thereunder shall limit the liability of Licensee under this License.

#### **Section 7.5 SERVICE INTERRUPTIONS**

In the event that the Licensee's service to any subscriber is interrupted for twenty-four (24) or more consecutive hours, it will grant such subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or apply such credit to any outstanding balance then currently due. In the instance of an individual subscriber service interruptions, credits shall be applied as described above after due notice to the Licensee from the

subscriber.

### **Section 7.6 PERFORMANCE EVALUATION SESSIONS**

The Issuing Authority may at its discretion but not more than once a year, hold a performance evaluation session on or about the anniversary of the Effective Date of this License. All such evaluation sessions shall be open to the public. The purpose of said evaluation sessions shall be to, among other things, review Licensee's compliance to the terms and conditions of this License, and hear comments, suggestions or complaints from the public. The Issuing Authority shall provide the Licensee with thirty (30) days, advance written notice of such performance evaluation session. The Issuing Authority shall have the right to question Licensee on any aspect concerning the construction, installation, operation or maintenance of the Cable Communications System. During review and evaluation by the Issuing Authority, Licensee shall fully cooperate with the Issuing Authority or its designee, and produce such documents or other materials as are reasonably requested by the Town and which are not considered proprietary by Licensee. Licensee shall notify its subscribers of all performance evaluation sessions by announcements on the Local Origination channel of its Cable System in the evening hours for at least five (5) consecutive days preceding each such session, provided that Licensee shall not be required to preempt its regularly scheduled access or Local Origination programming to air these announcements.

### **Section 7.7 NON-PERFORMANCE BY THE LICENSEE**

(a) The payment of damages for violations under this License shall not be deemed to excuse the violation.

(b) Failure of the Town to enforce the performance of any term of this License shall not be deemed a waiver of its right to insist upon the subsequent performance of that term.

### **Section 7.8 LICENSE FEE ENTITLEMENT**

(a) Subject to applicable law, Licensee shall, on or before March 15th of each year, submit a license fee to the Issuing Authority as provided in Section 9 of Chapter 166A of the Massachusetts General Laws. The number of subscribers, for purposes of this Section, shall be calculated on the last day of each year.

(b) Should Massachusetts law be changed to permit the Town and/or the Commonwealth to collect a greater license fee than provided above the Issuing Authority may collect an additional license fee after forty-five (45) days notice to Licensee of its intent to do so; provided that Licensee shall not be liable for a total financial commitment pursuant to this License and applicable law including but not limited to state and federal license fees and franchise fees, and PEG Access operating expenses in excess of five percent (5%) of the Licensee's gross annual revenue.

### **Section 7.9 NOTICE OF COMPLAINT PROCEDURE**

Licensee shall periodically, and at various times of the day, present its business office and address and publicly listed telephone number by means of alphanumeric display on its Local Origination channel. Said notice shall inform subscribers of the procedures required to request service or register a complaint.

### **Section 7.10 SUBSCRIBER AND USER COMPLAINTS**

Licensee shall keep all written as well as a record of verbal complaints it receives on file in its local business office in accordance with applicable state regulations. Should state regulatory

requirements for maintenance of complaint records be eliminated, then the Issuing Authority shall have the right to request Licensee to reasonably maintain records of written and verbal complaints which it receives. The Issuing Authority or its designee shall have the right to examine, review and copy said complaints at its own expense during Licensee's business hours upon reasonable notice.

#### **Section 7.11 SUBSCRIBER COMPLAINT REPORT**

To the extent required by G.L.c. 166A, Section 10, and 207 CMR 7.03, Licensee shall notify the Issuing Authority, on forms prescribed by the Division, of complaints of subscribers received during the reporting period and the manner in which the complaints have been met, including the time required to make any necessary repairs or adjustments. Licensee shall provide monthly reports of the same information upon the request of the Issuing Authority. Should the Division eliminate complaint reporting procedures, Licensee shall, in conjunction with the Issuing Authority, develop an acceptable form of complaint reporting.

#### **Section 7.12 INDIVIDUAL COMPLAINT REPORTS**

Licensee shall, within ten (10) days after receiving a request therefore, send a written report to the Issuing Authority with respect to any complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken.

#### **Section 7.13 INITIAL PERFORMANCE TESTS**

Initial proof of performance testing shall occur within sixty (60) days after the completion of the system upgrade. Said testing shall include performance testing of the Subscriber Network and the Institutional Network. Should performance in either case prove defective, the defect shall be appropriately corrected and another proof of performance test shall be scheduled in a timely period. Upon written request, Licensee shall make available a copy of the tests for the Cable Advisory Committee. The costs of such tests shall be borne solely by Licensee.

#### **Section 7.14 QUALITY OF SERVICE**

Where there exists credible evidence which, in the reasonable judgment of the Issuing Authority casts doubt upon the reliability or technical quality of cable service(s), after notice to Licensee and an opportunity to cure, the Issuing Authority shall have the right and authority to require Licensee to test, analyze and report on the performance of the Cable System. Licensee shall fully cooperate with the Issuing Authority in performing such testing.

The Issuing Authority may require said tests/inspections be supervised by a mutually agreed upon professional cable television engineer, at terms satisfactory to both the Town and Licensee, who is not an employee or agent of the Licensee of the Town. Licensee shall pay for the costs of said engineer only if the tests performed show that Licensee is not in compliance with the standards set forth in Section 3.16 (Construction and Maintenance Standards) herein.

#### **Section 7.15 SERVICE INTERRUPTION REPORT**

Licensee shall submit, on a form prescribed by the Division, a list of all significant service interruptions. Said report shall be submitted along with the Subscriber Complaint Report required in Section 7.10 (Subscriber and User Complaints) herein.

#### **Section 7.16 FINANCIAL REPORTS**

Pursuant to G.L.c. 166A, Section 8, the Licensee shall file annually with the Division, on forms prescribed by the Division, a statement of its revenues and expenses for official use only. In addition, Licensee shall file annually with the Division and the Issuing Authority on forms prescribed by the Division, a financial balance sheet and statement of ownership which shall be open to public inspection. Such statements and balance sheets shall be sworn to by the person preparing same and by the Owner or Treasurer of the Licensee. In the event the Division no longer requires or provides forms for such reporting, the Licensee shall annually provide the financial information requested in a format reasonably approved the Issuing Authority.

#### **Section 7.17 NUMBER OF SUBSCRIBERS**

Licensee shall file annually with the Issuing Authority a report containing the number of subscribers. Said report shall be filed with the Financial Reports required pursuant to Section 8.16 (Financial Reports) herein.

#### **Section 7.18 LINE EXTENSION REPORT**

The Issuing Authority may require Licensee to submit a report detailing the areas in the Town in which the Cable System has been extended during said reporting period, the dates of said extensions and the number of households capable of receiving cable service(s).

#### **Section 7.19 NON-EXCLUSIVITY OF REMEDY**

No decision by the Issuing Authority or the Town to invoke any remedy under this License or under any statute, law or ordinance shall preclude the availability of any other such remedy.

#### **Section 7.20 REVOCATION OF RENEWAL LICENSE**

This License may be revoked by the Issuing Authority, to the extent permitted by law. Any such revocations of this License shall be ordered after a public hearing by the Issuing Authority subject to the appeals provisions of G.L.c. 166A, Section 4, or any other rights available to the Licensee.

#### **Section 7.21 LETTER OF CREDIT**

(a) Licensee shall maintain, upon thirty (30) days notice from the Issuing Authority, at its own expense, an irrevocable documentary letter of credit from a financial institution in the amount of ten thousand dollars (\$10,000). The form and content of such letter of credit shall be approved by the Issuing Authority, which approval shall not be unreasonably withheld. The letter of credit shall be used to insure the faithful performance by the Licensee of all material provisions of this License, and compliance with all material orders, permits and directions of any office of the Town having jurisdiction over the Licensee's acts of defaults under this license, and the payment by the Licensee of any claim, liens, fees or taxes due the Town which arise by reason of the construction, operation or maintenance of the Cable System.

(b) Withdrawals notwithstanding, the letter of credit shall be maintained during the term of this License in the amount of ten thousand dollars (\$10,000), (i.e., even if amounts have been withdrawn pursuant to subsection (a) or (c) of this section).

(c) Once the letter of credit is established, if the Licensee after thirty (30) days written notice fails to pay to the Issuing Authority any fees, taxes or penalties due and unpaid, or fails to repay the Issuing Authority within thirty (30) days of its written demand for any damages, costs or

expenses that the Issuing Authority is compelled to pay by reason of any default of the Licensee in connection with this License; or, fails, after thirty (30) days written notice of such failure by the Issuing Authority, to comply with any material provision of this License or to effect a cure, the Issuing Authority may, in its discretion, withdraw funds from the letter of credit equal to damages created thereby as determined by the Issuing Authority upon the following conditions:

The Issuing Authority must indicate in the correspondence by which it initially notifies the Licensee of the default for which damages are sought that failure to cure the act or omission within thirty (30) days, or such longer period as is reasonably required, may result in a withdrawal from the letter of credit. In this correspondence, the Issuing Authority shall also indicate the basis upon which it believes the Licensee is in default. Upon the expiration of said thirty (30) day period, the Issuing Authority must provide written notice to the Licensee of the amount to be withdrawn and specify the reasons such amount is due. Such notice shall also provide that at Licensee's request, a public hearing will be held by the Issuing Authority prior to the withdrawal of any assessment of damages. At such hearing the Licensee may present testimony or evidence as to why damages should not be assessed. After the conclusion of said hearing, the Issuing Authority shall issue a public statement as to its decision to assess or not to assess damages. A request by the Licensee for a public hearing on whether damages should be assessed shall stay the Issuing Authority's right to withdraw from the letter of credit.

(d) Any decision of the Issuing Authority to assess damages under the letter of credit may be appealed to any court of competent jurisdiction. Any such appeal of the Issuing Authority's decision shall not result in a mandatory stay of the Issuing Authority's right to withdraw from the letter of credit, unless ordered by the court.

(e) The rights reserved to the Issuing Authority with respect to the letter of credit are in addition to all other rights of the Issuing Authority, whether reserved by this License or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Issuing Authority may have.

## **Section 7.22 ARBITRATION**

Any decision referred to arbitration shall be made by a board of three (3) arbitrators, appointed as follows: the Licensee shall send the Issuing Authority written notice requesting arbitration and, shall include the name of one (1) arbitrator selected by the Licensee. The Issuing Authority shall select one (1) arbitrator, and shall notify the Licensee of that person's name, within thirty (30) days after receipt of the notice requesting arbitration. Within fourteen (14) days after the Licensee has been notified of the name of the second arbitrator, the two (2) arbitrators thus selected shall select a third arbitrator who shall also act as Chairman of the Arbitration Board. This third arbitrator shall not be any person who has ever worked as employee, agent, attorney or lobbyist for any cable television company or industry or the Town of Barnstable or any other municipality, or regulatory agency except that the two (2) arbitrators may agree to waive this requirement. If the two (2) arbitrators are unable to agree upon, and obtain the services of a third arbitrator by the end of the fourteen (14) day period, either the Issuing Authority or the Licensee



may request the American Arbitration Association to appoint the third arbitrator within fourteen (14) days.

## **ARTICLE 8 GENERAL PROVISIONS**

### **Section 8.1 LICENSE AS CONTRACT UNDER SEAL**

Upon its execution by the Issuing Authority and Licensee this License shall be deemed to constitute a contract under seal by and between Licensee, on the one hand, and the Town of Barnstable, on the other hand.

### **Section 8.2 ENTIRE AGREEMENT**

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by instrument in writing executed by the parties.

### **Section 8.3 CAPTIONS**

The captions to sections throughout this License are intended solely to facilitate reading and reference to the sections and provisions of this License. Such captions shall not affect the meaning or interpretation of this License.

### **Section 8.4 SEVERABILITY**

If any section, sentence, paragraph, term or provision of this License is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision thereof, all of which shall remain in full force and effect for the term of this License.

## **Section 8.5 FORCE MAJEURE**

If for any reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this License, the term "force majeure" as used herein shall have the following meaning: strikes; acts of God; acts of public enemies, orders of any kind of the government of the United States of America or of the Commonwealth of Massachusetts or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots, epidemics; landslides; lightning; earthquakes; fires, hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the disabled party.

## **Section 8.6 NOTICES**

Every notice to be served upon the Issuing Authority shall be delivered or sent by certified mail (postage prepaid) to Attn: Town Manager, Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA 02601 or such other address as the Issuing Authority may specify in writing to the Licensee. Every notice served upon the Licensee shall be delivered or sent by certified mail (postage prepaid) to Attn: Director of Government Affairs, MediaOne, 6 Campanelli Drive, Andover, MA 01810-1095, or such other address as the Licensee may specify in writing to the Issuing Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of delivery or receipt.

## **Section 8.7 REMOVAL OF ANTENNAS**

Licensee shall not remove any television antenna of any subscriber but shall, offer to said subscriber and maintain an adequate switching device to allow said subscriber to choose between cable and non-cable television reception.

## **Section 8.8 SUBSCRIBER TELEVISION SETS**

To the extent prohibited by law, Licensee shall not engage directly or indirectly in the business of selling or repairing television or radio sets; provided, however, that Licensee may make adjustments to television sets in the course of normal maintenance.

## **Section 8.9 COST OF PUBLICATION**

Licensee shall, upon request of the Issuing Authority within thirty (30) days of the execution of this License, print and distribute at its sole cost and expense, a maximum of twenty-five (25) copies of the License.

## **Section 8.10 JURISDICTION**

Exclusive jurisdiction and venue over and dispute or judgment rendered pursuant to any provision herein shall be in a court of appropriate venue and subject matter jurisdiction located in the Commonwealth of Massachusetts, or upon appeal, other competent court or agency, and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit arising in connection with the entry of such judgment.

## **Section 8.11 MANAGEMENT AND TECHNICAL CHANGES**

License shall, periodically and no less than annually, upon request of the Issuing Authority, provide up-to-date maps of its technical plant within the Town of Barnstable, as well, as up-to-date organizational charts depicting Licensee's management personnel.

WITNESS OUR HANDS AND OFFICIAL SEALS, THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 19\_\_\_\_.

Approved as to form:

TOWN OF BARNSTABLE  
By:

\_\_\_\_\_  
Howard E. Horton, Esq.  
for the Town of Barnstable

\_\_\_\_\_  
James D. Tinsley  
Town Manager

## **SCHEDULE 5.1**

### **AGREEMENT BETWEEN**

CAPE COD COMMUNITY TELEVISION CORPORATION

MEDIAONE

and

TOWN OF BARNSTABLE

### **ARTICLE I DEFINITIONS**

For the purposes of this agreement the following words, terms phrases and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

“Access Corporation” means Cape Cod Community Television Corporation, which represents and warrants it is the nonprofit, tax exempt eligible corporation designated by the Issuing Authority to manage and operate public access in the Town pursuant to 47 U.S.C. 531.

“Access Programming” means programs on the public access channels. It must be noncommercial within the standards for underwriting applicable to the Public Broadcasting Service (PBS) or the standards necessary to maintain its tax exempt status within the applicable regulations of the Internal Revenue Service and excludes political campaigning.

“Cable Advisory Committee” means the Cable Advisory Committee as designated and authorized by the Issuing Authority, if any, to be responsible for cable television regulation and municipal uses of cable television in the Town of Barnstable.

“Cable License” or “License” means the agreement effective on February 1, 1999 between the Town of Barnstable and MediaOne, authorizing MediaOne to construct, own, operate and

maintain a cable television system in the Town of Barnstable.

“Channel” means a band of frequencies in the electromagnetic spectrum, or any other means of transmission (including without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a composite video signal.

“Commercial Program” means programming from which revenue is derived, by any party, and programming the purpose of which is to conduct trade or commerce. It shall not include programming supported by underwriting grants or contributions of any kind.

“Downstream Channel” means a channel over which signals travel from the system headend to an authorized location within the system.

“Institutional Network” means the portion of the cable television system, separate from the subscriber network, designed to deliver and receive programming or other services to or from the Licensee and on the Network.

“Issuing Authority” The Town Manager of Barnstable executing this Agreement, as it is a part of the License incorporated therein.

“Licensee” MediaOne , or its authorized transferee.

“Political Campaigning” means programs which, in whole or in part, promote political candidates during their election campaigns. It shall not include programs which in whole or in part, provide equal opportunities for all political candidates campaigning for a particular office, nor shall it include bona fide newscasts interviews, news documentaries, or on-the-spot coverage of news events.

“Public Access” means channel space and time as well as production and post-production equipment, facilities and training available free of charge to any person living in Barnstable or working for an organization in Barnstable, on a first come, first-served, nondiscriminatory basis.

“Public Access Facility” means the location from which the Access Corporation may operate the public access function.

“Public Institution” means any government institution or other not-for-profit institution organized and located in the Town of Barnstable.

“Upstream Channel” means a channel over which signals travel from an authorized location to the cable system headend.



## **ARTICLE II OBLIGATIONS OF LICENSEE**

### **Section 1 Annual Operating Funds: Schedule of Payments: Capital Funds**

License shall provide the Access Corporation with annual operating grants and Capital Funds in accordance with the License.

These annual funds shall be used by the Access Corporation for salaries, operating and other expenses connected with public access programming and operations.

### **Section 2 Public Access Facility**

Licensee shall provide origination capability to the Public access Facility such that programs may be transmitted upstream to the Headend and then downstream on the access channels on the subscriber network.

### **Section 3 System Design**

Licensee shall maintain headend switching equipment to process the upstream signals from the Public Access Facility and to place such signals on the designated access cable channels. Other than this automatic switching, Licensee shall not have further switching obligations. The Access Corporation will, however, be responsible for scheduling and transmitting public access programming on these channels. Licensee shall not be responsible for the quality of the upstream channel prior to origination.

### **Section 4 System Maintenance of Channels**

Licensee shall monitor the downstream public access channel(s) for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the cable system's commercial channels; provided, however, that this section shall not require Licensee to guarantee the technical quality of access users' productions.

#### **Section 4 (a) Public Access Channel(s)**

Licensee shall provide one dedicated channel to the Access Corporation for use on the subscriber network. If Licensee upgrades its cable plant to 1 GHZ or greater of capacity, if such channel, over a period for one year, is programmed with locally produced, non-duplicative, non-alpha numeric video programming, 90% of the time between the hours of 10 AM and 10 PM on weekdays, and 9:00 AM – 5:00 PM on Saturdays, Licensee shall provide an additional channel on the subscriber network to the Access Corporation.

#### **Section 5 Access Information for Subscribers**

Upon four months notice, Licensee shall insert in its monthly billing statements to Barnstable subscribers one page of promotional public access announcements at least one time per year, at a time to be determined by Licensee providing that the announcements are delivered to Licensee by the Access Corporation on a timely basis. This material shall be prepared and printed by the Access Corporation at its own expense; and Access Corporation shall bear full responsibility and liability for the contents of said announcements. Any additional postage which may be required to mail said billing statements as a result of the insert, shall be the sole financial responsibility of the Access Corporation.

## **ARTICLE III OBLIGATIONS OF THE ACCESS CORPORATION**

### **Section 1 Public Access Use: Operating Rules and Procedures**

The Access Corporation shall be solely responsible for the management and operation of Public Access and public access programming on the cable system in the Town of Barnstable, including training, quality of originated signals, (except as described in Section II.4) scheduling the public access channels and managing the access facilities, equipment, acquisition and maintenance in the Public Access Facility. The Access Corporation shall, within six (6) months following the execution of this agreement, promulgate a set a access operating rules and procedures which ensure that training, equipment, facilities and access channel time be available to residents of or any organizations serving the Town of Barnstable. These rules shall ensure the right to use designated channels, facilities and equipment on a nondiscriminatory, first-come, first-served basis subject to the terms of this agreement and subject also to Access Corporation's goal of establishing regularity in programming. Access user compliance with such rules shall be monitored by the Access Corporation. The Access Corporation shall furnish a copy of such rules to the Licensee within thirty (30) days of their adoption and shall provide Licensee with amendments to such rules throughout the term of this Agreement.

### **Section 2 Programming**

Editorial discretion and the content of programming and the liability therefor placed on the access channels operated by the Access Corporation shall solely reside in and be the sole responsibility of the Access Corporation. Notwithstanding the foregoing, the Access Corporation programming shall be designed to achieve the purposes set forth in the Access Corporation's Articles of Incorporation and Bylaws and shall consist of Access Programming as defined in the License and the Access Corporation shall avoid competition on a subsidized bases with Licensee.

To these ends:

The Access Corporation shall not sell to a third party any proprietary interest that the

Access Corporation may have in any programming without first offering Licensee the exclusive right to purchase such interest by matching the best good-faith offer tendered in writing by the third party;

All liability, license and copyright fees associated with the programming produced by the Access Corporation or placed on the access channel shall be the sole responsibility of the Access Corporation.

### **Section 3 Coverage of Regional News and Events**

Upon request of the Issuing Authority, the Access Corporation shall reasonably cover events and issues of a regional nature.

### **Section 4 Logs**

The Access Corporation shall keep a log of all access programming transmitted on the public access channels and the names and addresses of all access producers. The logs will be available for public inspection and retained for no less than two years.

### **Section 5 Indemnification**

The Access Corporation shall indemnify and hold harmless the Licensee and shall, in its rules for public access, require every access user to indemnify both Licensee and the Access Corporation and hold each of them harmless against any claims arising out of any program or program material produced and/or cablecast, including but not limited to claims in the nature of libel, slander, invasion of privacy or publicity rights, noncompliance with applicable laws, license fees and unauthorized use of copyrighted material.

### **Section 6 Insurance**

The Access Corporation shall carry insurance indemnifying Licensee, the Town of Barnstable and itself from and against any and all claims and liability for injury or damage to persons or property due to risk or peril caused by the use of access equipment or facilities managed by the Access Corporation, and shall name both Licensee and the Town of Barnstable additional insureds. Such insurance shall not be less than five hundred thousand dollars (\$500,000.00) for bodily injury or death to any one person or property damage resulting from any one occurrence. The Access Corporation shall insure all public access equipment for theft, loss and damage.

The insurance policy required under paragraph (a) above shall contain the following endorsement: It is hereby understood and agreed that this policy shall not be canceled or materially changed until thirty (30) days after receipt by the Town and Licensee, by certified mail, of one (1) copy of a written notice of such intent.

#### **Section 7 Informational and Annual Reports**

The Access Corporation shall provide an annual report of its finances and operations to its members, the Barnstable Cable Advisory Committee, the Issuing Authority and Licensee by April 15 for the previous calendar year. At any time during the term of this Agreement, upon the reasonable request of the Town or the Licensee, the Access Corporation shall provide such further information as may be reasonably requested to document the expenditure of funds in the performance of the Access Corporation pursuant to this agreement. The Access Corporation shall, at the discretion of the Issuing Authority, participate in performance evaluation sessions concerning its compliance with the terms and conditions of this Agreement.

#### **Section 8 Maintenance of Equipment**

The Access Corporation shall maintain its equipment to insure the reasonable technical quality of its origination signals and so that public access users are insured reasonable quality of the production equipment they use to produce programs

**Section 9 Expansion of Board of Directors**

Within ninety (90) days of the execution of this agreement, the Access Corporation shall amend its By-laws to expand its Board of Directors by one member, such member to be designated by the Issuing Authority.

## **ARTICLE IV TOWN OF BARNSTABLE**

### **Section 1 Designation of Access Corporation Under the License**

The Town of Barnstable, through its Issuing Authority, shall maintain the designation of Cape Cod Community Television Corporation as the Access Corporation throughout the term of the License. Should Cape Cod Community Television substantially breach its obligation under the materials terms of this Agreement, then, after notice and an opportunity to cure, the Issuing Authority and the Licensee, shall have the right to agree upon a new organization to receive the designation as Access Corporation. In no event shall Licensee be designated as the Access Corporation, nor shall it have the responsibility to provide public access services during any period in which a replacement Access Corporation has not been designated by the Issuing Authority. Pursuant to M.G.L. Chapter 166A and applicable federal law, the Issuing Authority has entered into this Agreement (Schedule 5.1 of the License) in its capacity of carrying out its cable licensing obligations and its participation in this Agreement is derived from and confined to such obligations.

## **ARTICLE V TERMINATION**

### **Section 1 Termination**

This agreement shall terminate on the earliest date of either the expiration of the current License; or the adjudication of the bankruptcy of the Access Corporation; or such time as the Access Corporation ceases to be a nonprofit corporation under the laws of the Commonwealth of Massachusetts; or at such time as Licensee and the Town of Barnstable institute a license amendment removing the Access Corporation's designation as having sole responsibility for public access under the License, pursuant to Article IV Section 1 of this Agreement, or at such time as this License is amended pursuant to Article II Section 2.6 of License.

### **Section 2 Termination by License Amendment**

Should this Agreement be terminated as a result of an amendatory action of the License by Licensee and the Town of Barnstable, all equipment acquired through the Capital Funds made available through the License shall be deeded to either Licensee or a newly designated Access Corporation, at the Issuing Authority's direction, within ninety (90) days of termination of this Agreement.

Agreed to this \_\_\_\_\_ of \_\_\_\_\_, 1998

**Town of Barnstable  
By:**

\_\_\_\_\_  
**MediaOne By**

\_\_\_\_\_  
**James D. Tinsley  
Town Manager**

\_\_\_\_\_  
**Access Corporation**



### **Schedule 3.4**

### **I-Net Locations**

**Schedule 3.4(f)**

**I-Net Hub-Site Criteria**

**Schedule 3.22**

**Home Wiring**

## **Schedule 4.1**

### **Initial Rates**

### **Schedule 4.3**

#### **Broad Categories of Programming**

## **Schedule 4.4**

### **Initial Programming Line-Up**

**Schedule 5.1**

**Agreement Between Cape Cod Community Television Corporation, MediaOne,  
and Town of Barnstable**

### **Schedule 6.3**

## **FCC Customer Service Regulations**



## **Schedule 6.5**

### **Customer Equipment Notice**

**Schedule 6.21**

**Remarketing Awareness Plan**